Chapter 34

The Religious Land Use and Institutionalized Persons Act of 2000

34-100 Introduction

The religious liberties protected by the First Amendment (*see section 6-500*) also must be considered in light of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). RLUIPA has been described as follows:

> As a legislative accommodation of religion, RLUIPA occupies a treacherous narrow zone between the Free Exercise Clause, which seeks to assure that government does not interfere with the exercise of religion, and the Establishment Clause, which prohibits the government from becoming entwined with religion in a manner that would express preference for one religion over another, or religion over irreligion.

Westchester Day School v. Village of Mamaroneck, 386 F.3d 183, 189 (2d Cir. 2004). Another court has observed that "to a significant extent, RLUIPA merely codifies existing Supreme Court precedent." *Roman Catholic Bishop v. City of Springfield*, 760 F. Supp. 2d 172, 192 (D. Mass. 2011). In giving meaning to the terms used within RLUIPA, the Act must be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the] Act and the Constitution." *42 U.S.C. § 2000cc-3(g).*

This chapter examines four key provisions of RLUIPA: (1) the prohibition against substantially burdening religious exercise under 42 U.S.C. § 2000cc(a)(1); (2) the equal terms provision under 42 U.S.C. § 2000cc(b)(1); (3) the prohibition against intentional discrimination under 42 U.S.C. § 2000cc(b)(2); and (4) the prohibition against total exclusion and unreasonable limitations under 42 U.S.C. § 2000cc(b)(3). *See Chapter 21 for a discussion of the application of RLUIPA to decisions made by an architectural review board as part of review of the design of a structure. See also Virginia Code § 57.2-02* (restating an individual's freedom of religion and prohibiting a locality from unduly burdening that right).

The Four Important Land Use Provisions of RLUIPA

- Substantial burden on religious exercise prohibited: "No government shall impose or implement a *land use regulation* in a manner that imposes a *substantial burden* on the *religious exercise* of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a *compelling governmental interest*; and (B) is *the least restrictive means* of furthering that compelling governmental interest." *42 U.S.C. § 2000cc(a)(1)* (italics added).

- Treatment on equal terms required: "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution *on less than equal terms* with a nonreligious assembly or institution." *42 U.S.C. § 2000cc(b)(1)* (italics added).

- Discrimination prohibited: "No government shall impose or implement a land use regulation that *discriminates* against any assembly or institution on the basis of religion or religious denomination." *42 U.S.C. § 2000cc(b)(2)* (italics added).

- Total exclusion and unreasonable limitations prohibited: "No government shall impose or implement a land use regulation that - (A) *totally excludes* religious assemblies from a jurisdiction; or (B) *unreasonably limits* religious assemblies, institutions, or structures within a jurisdiction." *42 U.S.C. § 2000cc(b)(3)* (italics added).

Note that the substantial burden provision protects individuals as well as religious assemblies and institutions. The equal terms and non-discrimination provisions protect only religious assemblies and institutions. The total exclusion provision applies only to religious assemblies, and the unreasonable limitations provision protects religious assemblies, institutions, and structures.

In considering RLUIPA, the reader should be mindful that RLUIPA has generated a significant amount of litigation, RLUIPA cases are fact-intensive, which means the pleadings and the evidence in each case are critical to the outcome, and the body of law is constantly evolving and being refined.[1]

34-200 RLUIPA prohibits a locality from imposing or implementing a land use regulation that imposes a substantial burden on religious exercise, with limited exceptions

42 U.S.C. § 2000cc(a)(1) provides:

> No government shall impose or implement a *land use regulation* in a manner that imposes a *substantial burden* on the *religious exercise* of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a *compelling governmental interest*; and (B) is *the least restrictive means* of furthering that compelling governmental interest. (italics added)

The five italicized terms of the substantial burden provision are addressed in sections 34-220 and 34-230.

34-210 The elements of a violation of the substantial burden provision

A locality may violate RLUIPA under the substantial burden provision if its land use regulation "puts substantial pressure on [a person, a religious assembly, or institution] to modify its behavior as opposed to its beliefs." *Canaan Christian Church v. Montgomery County, Maryland*, ___ F.4th ___, 2022 WL 839954, at 6 (4th Cir. 2022); *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548, 556 (4th Cir. 2013). This standard "protects against non-discriminatory, as well as discriminatory, conduct that imposes a substantial burden on religion." *Bethel*, 706 F.3d at 557.

If a substantial burden on religious exercise is established, the locality must then satisfy strict scrutiny by demonstrating that the land use regulation is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. See 42 U.S.C. § 2000cc(a)(1); *Canaan Christian Church*, 2022 WL 839954 at 6; *Redeemed Christian Church of God (Victory Temple) Bowie v. Prince George's County*, 17 F.4th 497, 510 (4th Cir. 2021); *Bethel,* 706 F.3d at 558.

A two-step analysis is applied to determine whether a substantial burden is imposed: (1) whether the impediment to the organization's religious practice is substantial; and (2) whether the government or the religious organization is responsible for the impediment. *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County*, 915 F.3d 256, 261 (4th Cir. 2019). This two-step analysis is discussed in section 34-230.

34-220 Preliminary issues: the meaning of *individualized assessments*, *land use regulations*, and *religious exercise*

In most cases involving RLUIPA's substantial burden provision, the heart of the matter is whether the burden on religious exercise is *substantial*. Before reaching the analysis of what it means for a locality's burden to be substantial, it is helpful to understand the meaning of *land use regulations*, *individualized assessment*, and *religious exercise* before reaching the question of substantial burden. These terms are addressed in sections 34-221, 34-222, 34-223.

34-221 The meaning of *land use regulations*

RLUIPA applies to land use regulations, which are defined to mean "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land." *42 U.S.C. § 2000cc-5(5).*

[1] The United States Courts of Appeals decisions are not uniform in how they have applied RLUIPA. This chapter focuses primarily on the appellate and trial court decisions from the Fourth Circuit Court of Appeals, whose jurisdiction includes Virginia.

The claimant must have an ownership, leasehold, easement, servitude, or other property interest in the land or a contract or option to acquire such an interest. *42 U.S.C. § 2000cc-5(5).*

"Zoning" in the context of RLUIPA is not defined by state law, but by federal law – RLUIPA – and its stated intent to be broadly applied. State definitions of "zoning" are inapplicable because a federal statute such as RLUIPA is construed under federal law unless Congress has clearly mandated otherwise. *Redeemed Christian Church of God (Victory Temple) Bowie , Maryland v. Prince George's County, Maryland*, 17 F.4th 497, 507 (4th Cir. 2021).

Thus, water and sewer regulations are "zoning laws" under RLUIPA. *Redeemed Christian Church of God*, 17 F.4th at 507 (4th Cir. 2021) (an amendment to a water and sewer plan is a zoning regulation under RLUIPA; to be a land use regulation, it must be "a zoning . . . law or the application of such a law, that limits or restricts a claimant's use or development of land"); *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548 (4th Cir. 2013). Similarly, a locality's requirement for a pump-and-haul permit was a zoning law within the meaning of RLUIPA, and not a public health law as the county contended. *United States v. County of Culpeper, Virginia*, 245 F. Supp. 3d 758 (W.D.Va. 2017) (where county's zoning laws made it impossible to receive permission from the county to build a structure without first obtaining the necessary sewage permit, its permitting process is considered a zoning law under RLUIPA).

RLUIPA does not apply to eminent domain. *Faith Temple Church v. Town of Brighton*, 405 F. Supp. 2d 250 (W.D. N.Y. 2005) (eminent domain is "conspicuously absent" from RLUIPA's definition of land use regulation); s*ee also St. John's United Church of Christ v. City of Chicago*, 401 F. Supp. 2d 887 (N.D. Ill. 2005). RLUIPA also does not apply to other governmental decisions that only may indirectly affect land use. *See Prater v. City of Burnside*, 289 F.3d 417 (6th Cir. 2002) (city decision not to close a segment of a public street to allow a church to make private use of it was not subject to RLUIPA because the decision not to close the road was not a zoning or landmarking law).

34-222 The meaning of *individualized assessment*

A locality may not impose a substantial burden on a religious exercise when it makes an *individualized assessment* of the proposed uses for the property involved. *42 U.S.C. § 2000cc(a)(2)(C)* (though not discussed here, under 42 U.S.C. § 2000cc(a)(2)(B), the Act is also triggered when a regulation impacts interstate commerce). A locality makes an individualized assessment when "[it] may take into account the particular details of an applicant's proposed use of land when deciding to permit or deny that use." *Redeemed Christian Church of God (Victory Temple) Bowie , Maryland v. Prince George's County, Maryland*, 17 F.4th 497, 507 (4th Cir. 2021) (those involved in the county's review and assessment process made recommendations based on features of Victory Temple's proposed development, including the size of its new church and its parking lot, the conditions of the roadways nearby, and compliance of the property with other relevant regulations).

Zoning ordinances "by their nature impose individual assessment regimes" because their application to particular parcels "necessarily involve[s] case-by-case evaluations of the propriety of proposed activity against extant land use regulations." *Freedom Baptist Church v. Township of Middletown*, 204 F. Supp. 2d 857, 868 (E.D. Penn. 2002). Thus, applications for rezonings affecting a single or a limited number of parcels, special use permits, site plans, variances, certificates of appropriateness, waivers and modifications are all types of *individualized assessments* that may trigger RLUIPA. *See, e.g., Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) (rezoning); *Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston*, 250 F. Supp. 2d 961 (N.D. Ill. 2003) (ordinance amendment); *Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183 (2d Cir. 2004) (special use permit); *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006) (conditional use permit); *Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005) (special exception); *Episcopal Student Foundation v. City of Ann Arbor*, 341 F. Supp. 2d 691 (E.D. Mich. 2004) (landmark demolition permit).

Other land use regulations also require individualized assessments, and the courts will find land use regulations to which RLUIPA applies beyond the localities' zoning ordinances.

34-223 The meaning of *religious exercise*

The question of whether the affected acts are a religious exercise requires one to first determine whether the person, religious assembly, or religious institution is engaged in a religion, followed by determining whether the acts are an exercise of that religion.

Religious *exercise* includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *42 U.S.C. § 2000cc-5(7).* 42 U.S.C. § 2000cc-5(7) defines the term to mean "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." Certainly, religious *exercise* is not confined to religious worship because many religions offer services beyond traditional worship as part of their religious offerings. *Episcopal Student Foundation v. City of Ann Arbor*, 341 F. Supp. 2d 691, 701 (E.D. Mich. 2004).

However, Congress never intended for every activity conducted by a religious institution or individual to be considered *religious exercise*:

> In many cases, real property is used by religious institutions for purposes that are comparable to those carried out by other institutions. While recognizing that these activities or facilities may be owned, sponsored or operated by a religious institution, or may permit a religious institution to obtain additional funds to further its religious activities, this alone does not automatically bring these activities or facilities within [RLUIPA's] definition of 'religious exercise.' For example, a burden on a commercial building, which is connected to religious exercise primarily by the fact that the proceeds from the building's operation would be used to support religious exercise, is not a substantial burden on 'religious exercise.'

146 Cong. Rec. at S 7776.

Whether a use falls within the meaning of *religious exercise* under RLUIPA will depend on the facts of the particular case. When assessing whether an action qualifies as a *religious* exercise, courts may not judge the significance of the particular belief or practice in question. *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1314 (10th Cir. 2010). Additionally, RLUIPA does not require that an activity be "fundamental" to the particular religion to be considered a religious exercise. *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 663 (10th Cir. 2006). A religious exercise need not be mandatory in order to be protected under RLUIPA. *Kikmura v. Hurley*, 242 F.3d 950, 960 (10th Cir. 2001). "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretation of those creeds." *Hernandez v. Commissioner*, 490 U.S. 680, 699, 109 S. Ct. 2136, 2148 (1989) (pre-RLUIPA). However, the belief applicable to the religious exercise must be "sincerely held." *Werner v McCotter,* 49 F.3d 1476, 1479 *fn.* 1 (10th Cir. 1995) *citing Wisconsin v Yoder,* 406 U.S. 205, 92 S. Ct. 1526 (1972).

Following is a sampling of cases where the courts held the activities to be religious exercise based on the evidence in the cases, including the stated missions of the religious institutions:

- Spiritual: The activities of the church of Wicca (*Dettmer v. Landon*, 799 F.2d 929, 931-932 (4th Cir. 1986)), holding prayer meetings in a residence (*Murphy v. Zoning Commission of Town of New Milford*, 148 F. Supp. 2d 173 (D. Conn. 2001)), and holding meetings, including meetings for Torah study and celebrating religious holidays, in a residence. (*Konikov v. Orange County*, 410 F. 3d 1317, 1323 (11th Cir. 2005)).

- Buildings and religious artifacts: The establishment of a parish center because it is a "reasonable extension" of church's religious use of its property *(Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309 (D. Mass. 2006)); a community center consisting of a single building, though "not a church as such," which mainly consisted of recreational and living facilities, and also had space for religious services (*World Outreach Conference Center v. City of Chicago*, 591 F.3d 531, 535 (7th Cir. 2009)).

- Activities beyond worship: Community outreach, social events, including a concert series, feeding members and

nonmembers of the congregation, and providing a student lounge and meditation room (*Episcopal Student Foundation v. City of Ann Arbor*, 341 F. Supp. 2d 691, 695 (E.D. Mich. 2004)), providing shelter to the homeless (*Family Life Church v. City of Elgin*, 561 F. Supp. 2d 978 (N.D. Ill. 2008)), allowing the homeless to sleep in designated outdoor areas on church property (*Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570 (2d Cir. 2002)).

The institution or individual claiming that a particular belief or practice is protected religious exercise has "the burden of demonstrating the honesty and accuracy of his contention that the religious practice at issue is important to the free exercise of his religion." *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004).

Following is a sampling of cases where the courts held the activities to not be religious exercise based on the evidence in the cases:

- Spiritual: A doctrine described as a "way of life." (*Harrison v. Watts*, 609 F. Supp. 2d 561 (E.D. Va. 2009)), fortune telling, which was based upon the appellant's set of beliefs, which closely resembled personal and philosophical choices consistent with a way of life (*Moore-King v. County of Chesterfield*, 708 F.3d 560, 571 (4th Cir. 2013)).

- Buildings and religious artifacts: The development and construction of an apartment complex that will be owned by a religious institution (*Greater Bible Way Temple of Jackson v. City of Jackson*, 733 N.W.2d 734 (Mich. 2007)), the ability to sell church property without delay caused by a demolition permit to fund a religious mission (*California-Nevada Annual Conference of the Methodist Church v. City and County of San Francisco*, 74 F. Supp. 3d 1144 (N.D. Cal. 2014)).

- Activities beyond worship: A day school for the disabled that would be owned and operated by a third party for-profit business on church property, even though the church asserted that having the school was an exercise of its "sincere religious belief" to minister to emotionally and mentally disabled children (*Calvary Christian Center v. City of Fredericksburg*, 832 F. Supp. 2d 635 (E.D. Va. 2011)), the lease of church property to a third party to hold catered social events (*Third Church of Christ v. City of New York*, 617 F. Supp. 2d 201, 209 (S.D. N.Y. 2008) *affirmed on other grounds* at 626 F.3d 667 (2d 2010)), *any* activity claimed to further the religious institution's worship program (*North Pacific Union Conference Association of the Seventh-Day Adventists v. Clark County*, 118 Wash.App. 22, 31 (2003)).

34-230 Whether a zoning regulation or its implementation imposes a ***substantial burden*** on religious exercise

A two-part test applies to determine whether a locality has substantially burdened religious exercise: "(1) whether the impediment to the organization's religious practice is substantial; and (2) whether the government or the religious organization is responsible for the impediment." *Canaan Christian Church v. Montgomery County, Maryland*, ___ F.4th ___, 2022 WL 839954, at 7 (4th Cir. 2022). If the impediment is substantial and the locality is responsible for the impediment, the locality has imposed a substantial burden on religious exercise.

34-231 Part one of the two-part test: whether the impediment on religious exercise is substantial

In the land use context, an impediment burden is substantial if "the property would serve an unmet religious need, the restriction on religious use is absolute rather than conditional, and the organization must acquire a different property as a result." *Canaan Christian Church v. Montgomery County, Maryland*, ___ F.4th ___, 2022 WL 839954, at 7 (4th Cir. 2022), quoting *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County, Maryland*, 915 F.3d 256, 261 (4th Cir. 2019). Note, however: (1) the fact that there are practical and legal restrictions preventing development as large as a religious institution desires on its property does not amount to a RLUIPA substantial burden violation (*Canaan Christian Church,* ___ F.4th at ___, 2022 WL839954 at 8) and (2) "[t]he absence of affordable and available properties within a geographic area will not by itself support a substantial burden claim under RLUIPA." *Andon, LLC v. City of Newport News*, 813 F.3d 510, 516 (4th Cir. 2016).

The common scenario is that a person or a religious assembly or institution (collectively, "religious institution") seeks to establish a facility in a locality to accommodate its membership and its mission; the religious institution acquires property and, at some point thereafter, seeks the required land use approvals from the locality; the locality denies the sought-after approval; and the denial is absolute, meaning that the religious institution has no other option than to find another property.

A substantial impediment was found in the following cases, but not all of these cases resulted in a court finding that a religious institution had alleged or established a substantial burden on religious exercise, as explained in section 34-232:

- *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548 (4th Cir. 2013): The church's existing facilities "inadequately serve[d] [the church's] needs," because they were "overcrowded, requiring ushers to turn people away from services and limiting Bethel's ability to offer various programs." This caused the church "to hold four services every Sunday, and to shorten services, interfering with [religious practices]," and "creat[ing] a sense of disunity because the congregation [was] divided into so many separate services." The church bought a 119 acre parcel in Montgomery County, Maryland's "rural density transfer zone" in the county's agricultural reserve in 2004 hoping to build a 3000-seat church. In the following years, the church reduced the proposed size of its facility and the county denied a request for permits for public water and sewer. Thereafter, the county amended its water and sewer plan and while the church's application for a permit for private water and sewer was pending, the county amended its regulations to prohibit institutional uses completely in the rural density transfer zone. The amendments imposed a blanket prohibition on all types of private institutions, rather than provide for a case-by-case determination as to whether a particular institution should be allowed. As a result, the court held that the prohibition was absolute, not conditional, requiring the church to find another property.

- *Redeemed Christian Church of God (Victory Temple) Bowie, Maryland v. Prince George's County, Maryland*, 17 F.4th 497 (4th Cir. 2021). Since it started in 2002, the church's membership grew rapidly from about 500 to more than 2,000 members and the church had outgrown its existing facility. The church bought a second property in 2018, needing a legislative approval to upgrade its water and sewer category to allow the property to be developed with public water and sewer. To be reclassified, an applicant had to meet the policies and criteria in the water and sewer plan, which included environmental factors, economics and general fiscal concerns, conformity with zoning, and impacts on traffic. Despite recommendations for approval from staff and others, the city council denied the church's application because it concluded the church's petition did not satisfy all the water and sewer plan criteria. The denial prevented the church from developing the property for a religious facility.

- *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County, Maryland*, 915 F.3d 256, 262–263 (4th Cir. 2019): The plaintiff sought approval to establish a church use in an existing building where the use was allowed by right in the zoning district subject to certain conditions pertaining to minimum setbacks (75 foot minimum), landscaped buffers (50 foot minimum), and parking. These conditions did not apply to new churches whose site plans were approved following a public hearing finding that compliance with the conditions will be maintained "to the extent possible" and that the plan "can otherwise be expected to be compatible with the character and general welfare of the surrounding residential purposes." The board of appeals denied both of the religious institution's petitions for site plan approval, even though the second petition proposed minimum setbacks of 55-72.7 feet and satisfied the buffer and parking requirements. Because the church was absolutely barred from using its property, the county imposed a substantial impediment.

- *Reaching Hearts International, Inc. v. Prince George's County*, 2010 U.S. App. LEXIS 4478, 2010 WL 724162 (4th Cir. 2010) (unpublished): The county amended the applicable laws after the religious institution acquired its property near a reservoir and thereafter denied its applications for water and sewer designation changes, even though on the same day the county approved 25 other applications and it was the only applicant seeking a religious land use.

- *Redemption Community Church v. City of Laurel, Maryland*, 333 F. Supp. 3d 521, 534–535 (D. Md. 2018): When the church signed the purchase agreement for its property in 2015, houses of worship and non-profits were allowed to operate within the C-V zone as a matter of right, with only the need for a parking waiver with the

understanding that it could operate as both a non-profit coffee shop and a house of worship without having to confront additional regulatory hurdles. Those plans changed when the city amended its land use regulations to impose additional restrictions before the religious institution could use its property for a house of worship. The court acknowledged that the circumstances in this case were not as drastic as those in *Bethel* (an outright prohibition) but said it "was still satisfied that those additional restrictions would suffice to constitute a substantial burden."

A substantial impediment was not found in the following cases:

- *Canaan Christian Church, supra*: The county denied the church's water and sewer category change requests ("WSCCRs") which prevented the church from building a 2000-seat facility on its property. The evidence was undisputed that the church had an unmet religious need: an overcrowded facility, the need for multiple services to accommodate the number of members, and a lack of space for programs. The evidence was also uncontested that if the church wanted to build a church of the size it wanted with public sewer access, it would need to find a different property. However, the court held that the county's denial of the WSCCRs was not absolute but conditional and therefore, not a substantial impediment, because the county "indicated during and after its review of the Canaan WSCCRs that alternatives might have been more successful." These alternatives included approving a religious land use for smaller buildings for an 800-seat facility and with septic with public water service only. The court rejected the church's argument that the county's denial of the WSCCRs was absolute on because the 800-seat facility alternative was inadequate.

- *Calvary Christian Center v. City of Fredericksburg*, 800 F. Supp. 2d 760 (E.D. Va. 2011): The city denied the religious institution's special use permit to allow a day school to be located on-site where the space for the day school would be rented to a for-profit business, even though the operator of the school stated that it wanted to operate only at the religious institution's facilities. The religious institution did not allege that there were no alternative locations. Therefore, the city's denial of the special use permit was not absolute.

34-232 Part two of the two-part test: whether the government or the religious institution is responsible for the impediment

If a locality imposes a substantial impediment to religious exercise, it has substantially burdened religious exercise and RLUIPA may be violated. However, if the religious institution is responsible for the impediment, *i.e.*, the impediment is self-imposed, the locality has not violated RLUIPA. These cases turn on whether the religious institution had a reasonable expectation that it would be able to use its property for a religious purpose.

A substantial impediment imposed *by the locality* was found in *Redeemed Christian Church of God (Victory Temple) Bowie, Maryland v. Prince George's County, Maryland*, 17 F.4th 497 (4th Cir. 2021), *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County, Maryland*, 915 F.3d 256, 262–263 (4th Cir. 2019), *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548 (4th Cir. 2013), and *Reaching Hearts International, Inc. v. Prince George's County*, 2010 U.S. App. LEXIS 4478, 2010 WL 724162 (4th Cir. 2010) (unpublished).

Bethel presents a common factual scenario. At the time the religious institution bought its land, the zoning regulations allowed religious institutions. While the religious institution's development applications were pending the county amended its zoning regulations and imposed a blanket prohibition on all private institutions in the district. Similarly, the court concluded in *Jesus Christ Is the Answer Ministries* that the plaintiff had sufficiently alleged that she had a reasonable expectation of using her property as a church because churches were "permitted as of right," provided that their site plans comply "to the extent possible with [applicable] requirements" and can "otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises." Significantly, the court said that the plaintiff was justified in believing that she could satisfy these *broadly and permissibly phrased conditions*, especially given that the zoning regulations permitted the proposed use as of right.

A religious institution may be responsible for the substantial impediment towards using its property for a religious purpose, in which case there is no RLUIPA violation. The common thread in these cases is that the religious institutions acquired their properties knowing that the properties did not comply with the existing land use

regulations and the religious institutions did not have a reasonable expectation that they would be allowed to use the properties for religious purposes. *Canaan Christian Church v. Montgomery County, Maryland*, ___ F.4th ___, 2022 WL 839954 (4th Cir. 2022); *Andon, LLC v. City of Newport News*, 813 F.3d 510 (4th Cir. 2016).

In *Andon,* the plaintiffs claimed that the city violated RLUIPA when its board of zoning appeals denied a variance from a setback regulation that would have allowed a commercially zoned property to be used for a community facility (*e.g.*, a place of worship). Before the variance application was filed, the religious institution was aware of the need for the variance but nonetheless entered into a lease agreement with the landowner, which was contingent upon the landowner obtaining the variance. The plaintiffs alleged that the board of zoning appeals' denial of the variance caused delay in obtaining a "viable worship location" and uncertainty as to whether the congregation would be able to "go forward with the lease of the property." An affidavit attached to the complaint stated that because of size, location, or price, an alternative location could not be found. The court upheld the board of zoning appeals' denial of the variance. Significant to the court was the fact that the plaintiffs proceeded with knowledge of the need for the variance. Therefore, "the alleged burdens they sustained were not imposed by the [board of zoning appeals'] action denying the variance, but were self-imposed hardships." *Andon*, 813 F.3d at 515. This, the court said, "generally will not support a substantial burden claim under RLUIPA because the hardship was not imposed by governmental action altering a legitimate, pre-existing expectation that a property could be obtained for a particular land use." *Andon, supra.*

34-233 Other considerations: the neutral application of generally applicable and legitimate land use regulations will *usually* not be found to impose a substantial burden on religious exercise

The courts have held that land use regulations and decisions do not impose a substantial burden on religious exercise where they are "neutral and traceable to municipal land planning goals" and where there is no evidence that governmental actions were taken "because [the applicant] is a religious institution." *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 350 (2d Cir. 2007), quoting *Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975 (7th Cir. 2006); *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003) ("costs, procedural requirements, and inherent political aspects" of the application process which are "incidental to any high-density urban land use" are not sufficient to establish a substantial burden); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227, *fn.* 11 (11th Cir. 2004) ("Reasonable 'run of the mill' zoning considerations do not constitute substantial burdens").

A religious institution's obligation to comply with a locality's zoning regulations is consistent with RLUIPA's legislative history:

> This Act does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay.

146 Cong. Rec. S7774-01, S7776 (2000) (Joint Statement of Sens. Hatch and Kennedy); *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548, *fn.* 4 (4th Cir. 2013) ("Certainly, Congress did not intend to permit religious organizations to exempt themselves from neutral zoning provisions").

The courts have said that religious institutions must comply with a locality's procedural and substantive requirements under its zoning regulations, even though those requirements may be costly, cause delay, and create a certain level of uncertainty. Following is a sampling of cases that have addressed challenges to various aspects of a locality's legitimate land use regulations:

- Procedural requirements: A locality's procedural zoning requirements, such as the requirement to file an application, pay an application fee, and seek an approval, do not impose a substantial burden on religious exercise. *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004); *Konikov v. Orange County*, 410 F. 3d 1317, 1323 (11th Cir. 2005); ("[R]equiring applications for variances, special permits, or other

relief provisions [does] not offend RLUIPA's goals").

- Substantive requirements: Under RLUIPA, religious institutions have no right to establish their use wherever they choose within the locality, and they are subject to a locality's substantive zoning requirements. *See, e.g.*, *Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975 (7th Cir. 2006) (requirements that the church obtain a special use permit and comply with the building size limitation established by the village's assembly ordinance did not impose a substantial burden); *Konikov, supra* (requirement that rabbi obtain a special use permit to operate a religious facility from a residence did not impose a substantial burden); *Christian Methodist Episcopal Church, supra* (church's claim that it should be allowed to operate wherever it chose, without regard to zoning rules, was unreasonable and not supported by RLUIPA or by the First Amendment).

- Cost to comply: The cost to comply with a locality's zoning regulations does not, in and of itself, impose a substantial burden. *Civil Liberties for Urban Believers, supra* (costs and other requirements are incidental to any high-density urban land use and are not sufficient to establish a substantial burden); *Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston*, 250 F. Supp. 2d 961 (N.D. Ill. 2003) (no substantial burden because "monetary and logistical burdens do not rise to the level of a substantial burden").

In sum, religious institutions must comply with a locality's neutral and generally applicable zoning regulations and the mere requirement to comply, in and of itself, is not a substantial burden on religious exercise.

34-234 Other considerations: the arbitrary, capricious, or unlawful application of generally applicable and legitimate land use regulations will likely result in a finding that the locality substantially burdened religious exercise

A substantial burden on religious exercise may be found if land use regulations are imposed on a religious institution arbitrarily, capriciously, or unlawfully. *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007). The arbitrary application of laws to religious institutions may reflect bias or discrimination against religion. *Westchester Day School; Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975 (7th Cir. 2006).

The courts will likely find that a locality has acted arbitrarily and capriciously in applying its standards in the following circumstances:

Seven Trouble Areas
• The locality's decision is not based on substantial evidence.
• The locality engages in endless delays in the process.
• The locality's standards are vague and subjective.
• The locality imposes unreasonable limitations that eliminate viable alternatives.
• The locality commits legal errors or displays ignorance about its obligations under RLUIPA.
• The locality inconsistently applies its policies and standards.
• The locality treats religious assemblies and institutions differently than nonreligious assemblies and institutions.

- Absence of substantial evidence: Decisions by localities that deny an application but which are not supported by substantial evidence are likely to be found to substantially burden religious exercise. See *Westchester Day School*, 504 F.3d at 351; *see also Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) (where the court held that the decision-maker could not justify its decision to deny the church's application, that the city had no legitimate concerns on which to base its denial, and the city acted with standardless discretion).

- Endless delays in the process: Schemes by localities to endlessly delay action on an application may be found to substantially burden religious exercise. See *Saints Constantine & Helen, supra*, and *Layman Lessons, Inc. v. City of Millersville, Tenn.*, 636 F. Supp. 2d 620 (M.D. Tenn. 2008).

- Standards that are vague and subjective: If a locality's zoning regulations rely on vague and subjective standards,

the courts may find that the religious institution has been substantially burdened by a decision under those standards unless the locality makes a strong evidentiary showing to support its decision. *See Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 456 F.3d 978, 989 (9th Cir. 2006); *Cambodian Buddhist Society of Connecticut v. Newtown*, 2005 Conn. Super. LEXIS 3158, 2005 WL 3370834 (2005) *affirmed* at 285 Conn. 381, 941 A.2d 868 (2008).

- Unreasonable limitations that eliminate of viable alternatives: Schemes by localities to allow only those options that are not viable to the religious institution may be found to substantially burden religious exercise. *See Guru Nanak*, 456 F.3d at 992; *Saints Constantine & Helen, supra.*

- Legal errors or ignorance: The locality's legal errors or ignorance about RLUIPA may reflect a discriminatory motive and lead to finding a substantial burden on religious exercise. *See Saints Constantine & Helen*, 396 F.3d at 899-900 (legal errors); *Grace Church v. City of San Diego*, 555 F. Supp. 2d 1126 (S.D. Cal. 2008) (ignorance).

- Inconsistent application of policies and standards: Government officials who inconsistently apply policies and standards and disregard relevant findings "without explanation" may substantially burden religious exercise. *Guru Nanak Society, supra.*

- Unequal treatment: A locality that grants approvals to nonreligious entities but denies similar approvals for religious organizations supports an inference of intentional discrimination by the locality. *See United States v. County of Culpeper, Virginia*, 245 F. Supp. 3d 758 (W.D. Va. 2017); *Reaching Hearts International, Inc. v. Prince George's County*, 584 F. Supp. 2d 766 (D. Md. 2008) *affirmed* at 2010 U.S. App. LEXIS 4478, 2010 WL 724162 (4th Cir. 2010) (unpublished).

Where the arbitrary, capricious, or unlawful nature of a locality's "challenged action suggests that a religious institution received less than even-handed treatment, the application of RLUIPA's substantial burden provision usefully backstops the explicit prohibition of religious discrimination in the later section of the Act." *Westchester Day School*, 504 F.3d at 351.

34-240 Whether a substantial burden on religious exercise is justified by a *compelling governmental interest*

If a locality's land use regulations substantially burden religious exercise, there is further analysis. The land use regulation, or its application, may be upheld if the locality demonstrates that the regulation is justified by a compelling governmental interest (discussed in this section) using the least restrictive means possible to achieve the compelling governmental interest (discussed in section 34-250).

RLUIPA does not define *compelling governmental interest*. A compelling governmental interest implicates "the government's paramount interest in protecting physical or mental health, public safety, or public welfare." *Redeemed Christian Church of God (Victory Temple) Bowie , Maryland v. Prince George's County, Maryland*, 17 F.4th 497, 510 (4th Cir. 2021). It is an interest of "the highest order" because "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 566, 113 S. Ct. 2217, 2244 (1993). "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation" on religious exercise. *Sherbert v. Verner*, 374 U.S. 398, 406, 83 S. Ct. 1790, 1795 (1963).

The traditional examples of compelling governmental interests include the allocation and collection of taxes, maintaining the integrity of the social security system, eradicating racial discrimination in education, the operation of military conscription laws, enforcing child labor laws, and protecting public health and safety. *Testimony of Steven K. Green, Legal Director, Americans United for Separation of Church and State, before the House Committee on the Judiciary, Subcommittee on the Constitution, July 14, 1998*.

The following provides a sampling of RLUIPA cases (except as otherwise noted) that have found that the governmental interests propounded by the locality were not compelling governmental interests:

- Controlling traffic volume. *Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183 (2d Cir. 2004.
- Retaining consistency with the comprehensive plan. *Rocky Mountain Christian Church v. Board of County Commissioners*, 612 F. Supp. 2d 1163 (D. Colo. 2009) *affirmed on other grounds at* 605 F.3d 1081 (10th Cir. 2010).

- Protecting a public drinking water impoundment where the county had approved other developments around the reservoir. *Reaching Hearts International, Inc. v. Prince George's County*, 584 F. Supp. 2d 766 (D. Md. 2008) *affirmed* at 2010 U.S. App. LEXIS 4478, 2010 WL 724162 (4th Cir. 2010) (unpublished).

- Aesthetic concerns or historic preservation. *American Legion Post 7 v. City of Durham*, 239 F.3d 601 (4th Cir. 2001) (flag case); *Keeler v. Mayor and City Council of Cumberland*, 940 F. Supp. 879 (D. Md. 1996) (historic preservation).

- Preserving lands in an industrial park for industrial uses where religious uses were allowed by conditional use permit, several parcels in the industrial park were already occupied by non-industrial uses, and 100 acres of the 600 acre industrial park were slated for non-industrial uses. *Grace Church v. City of San Diego*, 555 F. Supp. 2d 1126 (S.D. Cal. 2008).

- Architectural design where the design was required to be in harmony with the design of other buildings on the lot and in the vicinity. *Cambodian Buddhist Society of Connecticut v. Newtown*, 2005 Conn. Super. LEXIS 3158, 2005 WL 3370834 (2005) *affirmed* at 285 Conn. 381, 941 A.2d 868 (2008).

- Proposed use being in general harmony with the general character of the neighborhood, consistent with the purpose and intent of the zoning regulations, and not substantially impairing neighborhood property values. *Cambodian Buddhist Society of Connecticut v. Newtown*, 2005 Conn. Super. LEXIS 3158, 2005 WL 3370834 (2005) *affirmed* at 285 Conn. 381, 941 A.2d 868 (2008).

- Controlling blight. *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002).

- Generating tax revenue. *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002).

The court in *Grace Church v. City of San Diego*, 555 F. Supp. 2d 1126 (S.D. Cal. 2008) stated that one way to evaluate a claim of compelling interest is to consider whether in the past the governmental actor has consistently and vigorously protected that interest. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. at 547, 113 S. Ct. at 2234 ("A law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprotected").

34-250 Whether the substantial burden on religious exercise is the *least restrictive means possible* to achieve the compelling governmental interest

If a land use regulation substantially burdens religious exercise, it is valid under RLUIPA only if it serves a compelling governmental interest using the *least restrictive means possible* to achieve that interest. *42 U.S.C. § 2000cc(a)(1)*. This means that the locality must show that there are no alternative forms of regulation that would fulfill the compelling governmental interest. *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790 (1963). The "absence of qualitative and quantitative evidence on [the locality's] part undermine[s] any assertion that it fully and adequately considered any alternatives to its outright denials of [the religious institution's application[ ]" *Redeemed Christian Church of God (Victory Temple) Bowie , Maryland v. Prince George's County, Maryland*, 17 F.4th 497, 511 (4th Cir. 2021)

As a practical matter, the outright denial of a religious institution's land use application will rarely be the least restrictive means of achieving a compelling governmental interest when reasonable conditions of approval could address the asserted interest. *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548 (4th Cir. 2013) (even assuming that a blanket prohibition on private institutions in the zoning district served compelling

governmental interests, the county failed to present any evidence that its interest in preserving the integrity of the district could not be served by less restrictive means, such as a minimum lot size requirement or an individualized review process).

In *Reaching Hearts International, Inc. v. Prince George's County*, 584 F. Supp. 2d 766 (D. Md. 2008) *affirmed* at 2010 U.S. App. LEXIS 4478, 2010 WL 724162 (4th Cir. 2010) (unpublished), the trial concluded that, even if the county established a compelling governmental interest in protecting a public drinking water reservoir from nearby development, it failed to carry its burden because its actions in denying Reaching Heart's ("RHI") applications were not the least restrictive means of furthering any alleged compelling interests. The court found that the county failed to meet its burden because it "did not commission, examine, or adduce any evidence at trial in the form of data, studies, or reports indicating what (if any) impact RHI's water and sewer category change applications or subdivision proposal would have on Rocky Gorge Reservoir. In addition, the fact that another county, which accounted for significantly more of the drainage into the reservoir, had less restrictive impervious surface coverage requirements than Prince George County's further undermined its claim that its denial was employing the least restrictive means. Finally, the county's own expert testified that various methods existed to purify and mitigate any impacts on water quality due to any water runoff concerns from RHI's proposed plans (and the corresponding impervious surfaces, which could contribute to water runoff concerns).

34-300 RLUIPA requires that a locality treat a religious assembly or institution on *equal terms* with nonreligious assemblies and institutions

42 U.S.C. § 2000cc(b)(1) provides:

> No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

This provision is referred to as the *equal terms* provision of RLUIPA. The equal terms provision is intended to prevent localities from "singling out religious institutions for disfavored treatment in zoning schemes." *Hunt Valley Baptist Church, Inc. v. Baltimore County, Maryland*, 2020 WL 618662, at 6 (D. Md. 2020) (unpublished). In *Hunt Valley*, the county's R.C.4 zoning district regulations violated the equal terms provision because it allowed public schools by-right but required a special exception for religious institutions.

34-310 The elements of a violation of the equal terms provision

A locality may violate the equal terms provision when: (1) the plaintiff is a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the religious assembly or institution on less than equal terms with (4) a nonreligious assembly or institution. *Canaan Christian Church v. Montgomery County, Maryland*, ___ F.4th ___, 2022 WL 839954, at 9–10 (4th Cir. 2022), following *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1307 (11th Cir. 2006). The equal terms provision does not apply to persons. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1230-1231 (11th Cir. 2004).

A plaintiff alleging that the locality is not applying its regulations equally (known as an "as applied" challenge) must present evidence that a *similarly situated* nonreligious comparator received differential treatment under the challenged regulation. *Canaan Christian Church, supra*. Significantly, this comparator "must be similarly situated *with regard to the regulation at issue*." *Canaan Christian Church, supra*. If a plaintiff offers no similarly situated comparator, then there can be no cognizable evidence of less than equal treatment, and the plaintiff has failed to meet its initial burden of proof. *Canaan Christian Church, supra*. In *Canaan Christian Church*, the religious institution failed to provide a similarly situated comparator where the non-religious comparator it used – a museum – was located in a different part of the county and subject to a plan that was different than the plan that applied to the religious institution's property.

When a religious assembly or institution challenges a locality's regulation on the ground that it violates the equal terms provision as it is written (known as a "facial challenge"), there are two ways in which it may do so:

- The land use regulation facially differentiates between religious and nonreligious assemblies or institutions: In this situation, the zoning ordinance in issue creates a zoning district in which certain non-religious assemblies or institutions are permitted, but religious assemblies are prohibited.

- A facially neutral land use regulation is nevertheless "gerrymandered" to place a burden solely on religious, as opposed to nonreligious, assemblies or institutions: An example is an ordinance that proscribes ritualistic animal sacrifice, while at the same time permitting animal slaughter for other religious or secular purposes. On closer analysis, the ordinance targeted the religious exercise of a particular church.

Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d 1295, 1308–1309 (11th Cir. 2006).

A violation of the equal terms provision is not necessarily fatal to the land use regulation, but a violation of the equal terms provision is subject to strict scrutiny and will be upheld only if the locality justifies it by demonstrating a compelling governmental interest. *Canaan Christian Church v. Montgomery County, Maryland*, ___ F.4th ___, 2022 WL 839954, at 9.

34-320 A religious assembly or institution is not required to show that the locality's unequal treatment substantially burdens religious exercise

The equal terms provision is violated whenever religious land uses are treated worse than comparable nonreligious ones, whether or not the discrimination imposes a substantial burden on religious exercise. *Digrugilliers v. Consolidated City of Indianapolis*, 506 F.3d 612, 616 (7th Cir. 2007), citing *Vision Church v. Village of Long Grove*, 468 F.3d 975, 1002-1003 (7th Cir. 2006); *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1308 (11th Cir. 2006); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1228-1231 (11th Cir. 2004) ("where a zoning regulation treats religious assemblies differently than secular assemblies [such as private clubs and lodges] by excluding religious assemblies from the business district, a factor that is enough to constitute a violation of § (b) of RLUIPA . . . With respect to neutrality, the purpose and operation of the ordinance reveal an impermissible attempt to target religious assemblies").

34-330 Uses that may or may not be similar to religious assemblies and institutions

The following cases are a sampling of the RLUIPA cases where a particular use was similar to a religious assembly or institution. These cases are provided only for illustrative purposes:

- Public schools. *Hunt Valley Baptist Church, Inc. v. Baltimore County, Maryland*, 2020 WL 618662 at 12 (D. Md. 2020) (unpublished).

- Cinemas, theaters, open microphone venues, karaoke, poetry or dramatic readings, libraries, and schools for business, art, or music. *Redemption Community Church v. City of Laurel, Maryland*, 333 F. Supp. 3d 521, 533 (D. Md. 2018).

- Restaurants, hotels, theaters, stores, and other permitted uses in a commercial zoning district. *Christian Fellowship Centers of New York v. Village of Canton*, 377 F. Supp. 3d 146 (N.D.N.Y. 2019).

- Private parks, playgrounds, and neighborhood recreation centers. *Covenant Christian Ministries, Inc. v. City of Marietta*, 654 F.3d 1231, 1245 (11th Cir. 2011).

- Private clubs. *Elijah Group, Inc. v. City of Leon Valley*, 643 F.3d 419, 424 (5th Cir. 2011).

- Social organizations. *Konikov v. Orange County*, 410 F.3d 1317, 1329 (11th Cir. 2005).

- A hotel operating a catering service, where a religious assembly or institution wanted to operate a catering service. *Third Church of Christ, Scientist, of New York City v. City of New York*, 626 F.3d 667 (2d Cir. 2010).

- Membership organizations. *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1172 (9th Cir. 2011).

- Community centers, meeting halls, and libraries. *River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367, 371 (7th Cir. 2010).

- Libraries. *Immanuel Baptist Church v. City of Chicago*, 344 F. Supp. 3d 978 (N.D. Ill. 2018).

- Gatherings by organizations such as the Boy Scouts and Girls Scouts in residences in residential neighborhoods. *Yetto v. City of Jackson*, 2019 U.S. Dist. LEXIS 18285 (M.D. Tenn. 2019) (unpublished).

- Assisted-living facilities, auditoriums, assembly halls, community centers, senior citizens' centers, day-care centers, nursing homes, funeral homes, radio and television studios, art galleries, civic clubs, libraries, museums, junior colleges, correspondence schools, schools that teach data processing, and nurseries, together with accessory uses and structures, plus various accessory retail and service commercial uses, including a cafeteria or other restaurants serving only employees and guests, drugstores, florists, office-supply services, and newsstands. *Digrugilliers v. Consolidated City of Indianapolis*, 506 F.3d 612, 616 (7th Cir. 2007)

The following cases are a sampling of the RLUIPA cases where a particular use was not similar to a religious assembly or institution. These cases are provided only for illustrative purposes:

- A 10-member book club is equal only to a 10-member religious assembly or institution; it is not equal to a 1000-member religious assembly or institution. *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253 (3rd Cir. 2007).

- A public high school, which was not located by the county but by the school board under its exclusive authority. *Grace Church of Roaring Fork Valley v. Board of County Commissioners of Pitkin County*, 742 F. Supp. 2d 1156, 1164 (D. Colo. 2010).

- Small one room historic school building used as a meeting room and community gathering place. *Grace Church of Roaring Fork Valley, supra.*

- Golf club located on property annexed by the town and approved by the town. *Grace Church of Roaring Fork Valley, supra.*

- Private clubhouse in a residential community used for weddings, lectures and other events. *Grace Church of Roaring Fork Valley, supra.*

- Gymnasiums. *River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367, 371 (7th Cir. 2010)

4-400 RLUIPA prohibits a locality from *discriminating* against any assembly or institution on the basis of religion or religious denomination

42 U.S.C. § 2000cc(b)(2) provides:

> No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

This provision is referred to as the *nondiscrimination* provision of RLUIPA.

34-410 The elements of a violation of the non-discrimination provision

A locality may violate RLUIPA when its decision being challenged was motivated at least in part by discriminatory intent. *Jesus Christ Is the Answer Ministries, Inc. v. Baltimore County, Maryland*, 915 F.3d 256, 262–263 (4th Cir. 2019).

The courts in the Fourth Circuit have recognized several factors that are probative of whether a decision-making body was motivated by discriminatory intent:

- Consistent pattern: Evidence of a 'consistent pattern' of actions by the decision-making body disparately impacting members of a particular class of persons.

- History: The historical background of the decision, which may consider any history of discrimination by the decision-making body or the jurisdiction it represents.

- Sequence of events: The specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures.

- Contemporary statements: Contemporary statements by decision-makers on the record or in minutes of their meetings.

Reaching Hearts International, Inc. v. Prince George's County, 584 F. Supp. 2d 766 (D. Md. 2008) *affirmed* at 2010 U.S. App. LEXIS 4478, 2010 WL 724162 (4th Cir. 2010) (unpublished).

The specific sequence of events leading up to the challenged decision – departures from normal procedures "can suggest that the decision was based on unlawful motives." *Jesus Christ Is the Answer Ministries, Inc.,* 915 F.3d at 262-264. A decision *influenced* by community members' religious bias is unlawful, even if the government decisionmakers display no bias themselves. This influence may be inferred where expressions of community bias are followed by irregularities in government decision-making. *Jesus Christ Is the Answer Ministries, Inc.,* 915 F.3d at 264 (neighbors made bigoted remarks at hearings, the board denied the applicant's petition even though the director of planning did not oppose it).

In *Redemption Community Church v. City of Laurel, Maryland*, 333 F. Supp. 3d 521, 533–534 (D. Md. 2018), the court found that the religious institution alleged a *prima facie* case where the city amended its regulations in proximity to the purchase of its property, followed by another amendment to the city's regulations after the city denied the religious institution's request for a parking waiver. Further supporting the religious institution's claim were allegations regarding precise statements by a city planner from which one could fairly imply that he, and possibly others, may have been motivated by discriminatory intent.

In *United States v. County of Culpeper*, 245 F. Supp. 3d 758, 770 (W.D. Va. 2017), the court found that the applicant, seeking a pump and haul permit to allow it to construct a mosque on its property, had adequately alleged a *prima facie* case of discrimination. The court listed the following factors: "(1) the County historically granted permits as a matter of course and subjected applications to minimal review; (2) prior permits were granted to religious and secular organizations alike; (3) when local citizens and officials became aware of the ICC's application, the scheduled hearing was abruptly postponed; (4) the County then subjected the ICC's application to an atypically thorough examination; (5) some County officials believed this heightened scrutiny was attributable to the ICC's religious status and beliefs; (6) the ICC's application satisfied state law requirements and the County's historical criteria, and; (7) there was a nontrivial amount of public anti–Muslim sentiment regarding the application, which was communicated by constituents to Board members before their vote."

Once *prima facie* claim of religious discrimination is established, the government bears the burden of persuasion on all elements of the claim. *42 U.S.C. § 2000cc-2(b).*

34-420 If there is discrimination, it must be related to the religion or the religious denomination to violate RLUIPA

If the discrimination is not about the religion or the religious denomination, but about something else, such as animus to the size of a proposed building or the traffic the use will generate, the nondiscrimination provision of RLUIPA is not violated.

In *Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548 (4th Cir. 2013), the church failed to show any discrimination where the opposition to the church had nothing to do with the fact it was a religious institution, but instead was based on the proposed institution's size. In *World Outreach Conference Center v. City of Chicago*, 591 F.3d 531, 535 (7th Cir. 2009), the court found no discrimination where, though there may have been discrimination by an alderman who expressed a desire that the property at issue have been sold to his political supporter rather than to World Outreach, the discrimination was not based on religious grounds. Instead, the discrimination was based on the developer's financial relationship with the alderman, and "religion didn't enter the picture."

Sometimes statements may be unclear as to whether they reflect animus against a religion or religious denomination. In *Hunt Valley Baptist Church, Inc. v. Baltimore County, Maryland*, 2020 WL 618662 at 14 (D. Md. 2020) (unpublished), the court declined to grant summary judgment where issues of material fact were disputed. The religious institution provided evidence that board members and community members "made derisive comments about the proposed 'megachurch,' and took issue with the Church's position on home-schooling." The county argued that the comments related merely to "the scale and size" of the project and did not evince discriminatory intent.

34-500 RLUIPA prohibits a locality from *totally excluding* religious assemblies or *unreasonably limiting* religious assemblies, institutions or structures

42 U.S.C. § 2000cc(b)(3) provides:

> No government shall impose or implement a land use regulation that - (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

The legislative history reveals that "[w]hat is reasonable must be determined in light of all the facts, including the actual availability of land and the economics of religious organizations." *146 Cong. Rec. E1563 (2000) (Statement of Rep. Canady).*

34-510 Total exclusion of religious assemblies

A locality is prohibited from totally excluding religious assemblies from their jurisdiction. However, a locality is not required to allow religious assemblies throughout its jurisdiction. In *Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975 (7th Cir. 2006), the village allowed religious assemblies only in its residential zoning districts, and only by special use permit. The court rejected the church's argument that the village's zoning regulations that did not allow religious assemblies by-right in any zoning district was a total exclusion.

34-520 Unreasonably limiting religious assemblies, institutions, or structures

RLUIPA's unreasonable limitation provision prevents government from adopting policies that make it difficult for religious institutions to locate anywhere within the locality. *Bethel World Outreach Ministries v. Montgomery County*

Council, 706 F.3d 548 (4th Cir. 2013). In *Bethel*, the court held that the county's zoning regulation that prohibited religious assemblies, along with other institutional uses, on properties in the county's rural density transfer zone encumbered by transferable development rights easements was not an unreasonable limitation. There was no evidence that religious institutions did not have a reasonable opportunity to build elsewhere in the county (but the court alternatively found that the county's land use regulations substantially burdened religious exercise).

Allowing religious institutions only by special use permit within the locality is not an unreasonable limitation. *Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975, 990-991 (7th Cir. 2006) ("The requirement that churches obtain a special use permit is neutral on its face and is justified by legitimate, non-discriminatory municipal planning goals").

Statement of the Department of Justice on the Land Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc to 2000cc-5, is a civil rights law that protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations.[1] After hearings in which Congress heard that religious assemblies and institutions were disproportionately affected, and in fact were often actively discriminated against, in local land use decisions, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress heard testimony that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations and individuals to exercise their faith with little to no justification and in violation of the Constitution. Congress also heard testimony that religious institutions often faced both subtle and overt discrimination in zoning, particularly if those institutions involved minority, newer, smaller, or unfamiliar religious groups and denominations.[2]

Congress also heard testimony that, as a whole, religious institutions were treated worse than comparable secular institutions by zoning codes and zoning authorities. As RLUIPA's Senate sponsors, Senator Hatch and the late Senator Kennedy, said in their joint statement issued upon the bill's passage: "Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes."[3]

Congress further heard testimony that zoning authorities often placed excessive burdens on the ability of congregations and individuals to exercise their faiths without sufficient justification, in violation of the Constitution.

RLUIPA provides a number of important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions, including:

- *Protection against substantial burdens on religious exercise*: RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden"

[1] This Statement deals with RLUIPA's land use provisions. Another section of RLUIPA protects the religious freedom of persons confined to prisons and certain other institutions.
[2] 146 CONG. REC. S7774 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy).
[3] *Id.* at S7774-75.

on the religious exercise of a person or religious assembly or institution except where justified by a "compelling governmental interest" that the government pursues in the least restrictive way possible.[4]

- *Protection against unequal treatment for religious assemblies and institutions*: RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.[5]

- *Protection against religious or denominational discrimination*: RLUIPA prohibits discrimination "against any assembly or institution on the basis of religion or religious denomination."[6]

- *Protection against total exclusion of religious assemblies*: RLUIPA provides that governments must not totally exclude religious assemblies from a jurisdiction.[7]

- *Protection against unreasonable limitation of religious assemblies*: RLUIPA states that governments must not unreasonably limit "religious assemblies, institutions, or structures within a jurisdiction."[8]

RLUIPA's protections can be enforced by the Department of Justice or by private lawsuits. In the eighteen years since its passage, RLUIPA has been applied in a wide variety of contexts and has been the subject of substantial litigation in the courts. It is a complex statute, with five separate provisions which protect religious exercise in different but sometimes overlapping ways.

In order to assist persons and institutions in understanding their rights under RLUIPA, and to assist municipalities and other government entities in understanding the requirements that RLUIPA imposes, the Department of Justice has created this summary and accompanying questions and answers. This document rescinds and replaces a prior version, released in 2010, which was not fully consistent with the Attorney General's Memorandum on Guidance Documents of November 16, 2017.[9] This non-binding guidance document is just that: non-binding guidance to individuals, religious institutions, and local officials about existing law. It is not intended to create any new obligations or requirements, nor establish binding standards by which the Department of Justice will determine compliance with RLUIPA. This document is not intended to compel anyone into taking any action or refraining from taking any action—indeed, the Department will not bring any enforcement actions based on noncompliance with this document.[10] Rather, this document is intended to describe the various provisions of the

[4] RLUIPA, 42 U.S.C. § 2000cc(a).
[5] RLUIPA, 42 U.S.C. § 2000cc(b)(1).
[6] RLUIPA, 42 U.S.C. § 2000cc(b)(2).
[7] RLUIPA, 42 U.S.C. § 2000cc(b)(3)(A).
[8] RLUIPA, 42 U.S.C. § 2000cc(b)(3)(B).
[9] Available at www.justice.gov/opa/press-release/file/1012271/download.
[10] See Memorandum from the Associate Attorney General on Limiting Use of Agency Guidance Documents in Affirmative Civil Rights Cases, available at www.justice.gov/file/1028756/download.

statute in a simple and straightforward manner and to provide examples of how some courts have interpreted and applied the law in various contexts. Such examples are purely illustrative and do not necessarily reflect binding law.

Please note that this guidance document is not a final agency action, has no force or effect of law, and may be rescinded or modified in the Department's complete discretion.

Date: June 13, 2018

Questions and Answers on the Land Use Provisions of RLUIPA

1. Who is protected and what types of activities are covered by RLUIPA?

RLUIPA protects the religious exercise of "persons," defined to include religious assemblies and institutions in addition to individuals.[11] Courts have applied RLUIPA, for example, in cases involving houses of worship,[12] individuals holding prayer meetings in their homes,[13] religious schools,[14] religious retreat centers,[15] cemeteries,[16] and faith-based social services provided by religious entities.[17]

2. What does "religious exercise" include?

RLUIPA provides that "religious exercise" includes any exercise of religion, "whether or not compelled by, or central to, a system of religious belief."[18] Thus, a county or municipality cannot avoid the force of RLUIPA by asserting that a particular religious activity is something that a religious group merely wants to do rather than something that it must do. For example, a town could not claim that Sunday school classes are not religious exercise because they are less central to a church's beliefs or less compulsory than worship services.[19]

RLUIPA also specifies that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . . ."[20] This provision makes clear that religious exercise under RLUIPA includes construction or expansion of places of worship and other properties used for religious exercise.[21]

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[11] RLUIPA, 42 U.S.C. § 2000cc(a).
[12] *See, e.g.*, *Guru Nanak Sikh Soc'y v. Cty. of Sutter*, 456 F.3d 978, 986-87 (9th Cir. 2006); *Saints Constantine and Helen Greek Orthodox Church v. City of New Berlin,* 396 F.3d 895, 897 (7th Cir. 2005).
[13] *See, e.g., Konikov v. Orange Cty.*, 410 F.3d 1317, 1320-21 (11th Cir. 2005) (meetings in rabbi's home).
[14] *See Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 344 (2d Cir. 2007).
[15] *See DiLaura v. Twp. of Ann Arbor*, 112 F. App'x 445, 446 (6th Cir. 2004).
[16] *See Roman Catholic Diocese of Rockville Ctr. v. Vill. of Old Westbury*, 128 F. Supp. 3d 566, 571 (E.D.N.Y. 2015).
[17] *See, e.g., Harbor Missionary Church Corp. v. City of San Buenaventura,* 642 F. App'x. 726, 729 (9th Cir. 2016); *Layman Lessons, Inc. v. City of Millersville*, 636 F. Supp. 2d 620, 648-50 (M.D. Tenn. 2008).
[18] RLUIPA, 42 U.S.C. § 2000cc-5(7)(A).
[19] *See Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 545 (S.D.N.Y. 2006) (classes with Jewish content are religious exercise for RLUIPA purposes whether or not they are "core religious practice."); *Living Water Church of God v. Charter Twp. of Meridian*, 384 F. Supp. 2d 1123, 1130 (W.D. Mich. 2005) (use of church for school and other ministries of the church were religious exercise for purposes of RLUIPA), *rev'd on other grounds*, 258 F. App'x 729 (6th Cir. 2007).
[20] RLUIPA, 42 U.S.C. § 2000cc-5(7)(B).
[21] *See, e.g., Chabad Lubavitch of Litchfield County, Inc. v. Borough of Litchfield*, No. 3:09-cv-1419, 2016 WL 370696, *18 (D. Conn. 2016); *Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 424 (S.D.N.Y. 2015) (citing *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)).

Courts have held that "religious exercise" covers a wide range of activities, including operation of various faith-based social services facilities;[22] accessory uses such as fellowship halls, parish halls and similar buildings or rooms used for meetings, religious education, and similar functions;[23] operation of a religious retreat center in a house;[24] religious gatherings in homes;[25] and construction or expansion of religiously affiliated schools, even where the facilities would be used for both secular and religious educational activities.[26]

3. Who is bound by RLUIPA's requirements?

RLUIPA applies to states (including state departments and agencies) and their subdivisions, such as counties, municipalities, villages, towns, cities, city councils, planning boards, zoning boards, and zoning appeals boards.[27]

4. Does RLUIPA exempt religious assemblies and institutions from local zoning laws?

No. RLUIPA is not a blanket exemption from zoning laws.[28] As a general matter, religious institutions must apply for the same permits, follow the same requirements, and go through the same land use processes as other land users.[29] But RLUIPA by its terms prohibits a local government from applying zoning laws or regulations in a way that:

- Substantially burdens religious exercise without a compelling justification pursued through the least restrictive means;
- Treats religious uses less favorably than nonreligious assemblies and institutions;
- Discriminates based on religion or religious denomination; or
- Totally or unreasonably restricts religious uses in the local jurisdiction.

When there is a conflict between RLUIPA and the zoning code or how it is applied, RLUIPA, as a federal civil rights law, takes precedence.[30]

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[22] *See* notes to Question and Answer 1, above.
[23] *See Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309, 319 (D. Mass. 2006).
[24] *See DiLaura*, 112 F. App'x at 446.
[25] *See Konikov,* 410 F.3d at 1320-21.
[26] *See Westchester Day Sch.,* 504 F.3d at 347.
[27] RLUIPA, 42 U.S.C. 2000cc-5(4).
[28] *See World Outreach Conference Ctr. v. City of Chicago,* 591 F.3d 531, 539 (7th Cir. 2009); *see also* 146 CONG. REC. S7776.
[29] *See, e.g.*, *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir. 2003); *Anselmo v. Cty. of Shasta,* 873 F. Supp. 2d 1247, 1262 (E.D. Cal. 2012).
[30] *Holy Ghost Revival Ministries v. City of Marysville*, 98 F. Supp. 3d 1153, 1165 (W.D. Wash. 2015) (zoning laws that conflict with RLUIPA must yield under the Supremacy Clause).

5. Are there occasions when a religious assembly or institution does not have to apply for zoning approval, and appeal any denial, before it has recourse to RLUIPA?

As a practical matter, applying for a zoning permit, special use permit, conditional use permit, special exception, variance, rezoning, or other zoning procedure, and appealing within that system in case of denials, is often the fastest and most efficient way to obtain ultimate approval.

Some courts have held that, in some circumstances, religious institutions need not make an application or appeal before filing a RLUIPA lawsuit. These include settings where further application or appeal would be futile under the circumstances;[31] there would be excessive delay, uncertainty, or expense;[32] or if the application requirements are discriminatory on their face.[33]

6. RLUIPA applies to any "land use regulation." What does that mean?

RLUIPA defines land use regulation as a "zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land."[34] Zoning laws include statutes, ordinances, or codes that determine what type of building or land use can be located in what areas and under what conditions.[35] In addition to requests for variances, rezonings, special use permits, conditional use permits, occupancy permits, site plans approvals, and other typical zoning actions, some courts have construed "zoning law" to encompass things such as environmental regulations[36] or sewage requirements[37] that are integrated into the zoning process. Landmarking laws are restrictions that municipalities place on specific buildings or sites to preserve those that are deemed significant for historical, architectural, or cultural reasons.[38]

Some courts have held that RLUIPA's definition of land use regulation, however, does not extend to every type of law involving land, such as fire codes,[39] the Americans with

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[31] *World Outreach,* 591 F.3d at 537.
[32] *Guru Nanak Sikh Soc'y,* 456 F.3d at 991; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.
[33] *See Digrugilliers v. City of Indianapolis*, 506 F.3d 612, 615 (7th Cir. 2007).
[34] RLUIPA, 42 U.S.C. § 2000cc-5(5).
[35] *See Martin v. Houston*, 196 F. Supp. 3d 1258, 1264 (M.D. Ala. 2016).
[36] *Fortress Bible Church v. Feiner*, 694 F.3d 209, 216 (2d Cir. 2012).
[37] *United States v. Cty. of Culpeper*, 245 F. Supp. 3d 758, 766 (W.D. Va. 2017).
[38] *See Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 129 (1978); *Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach*, 727 F.3d 1349, 1353 (11th Cir. 2013).
[39] *See Petra Presbyterian Church v. Vill. of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007); *Lighthouse Cmty. Church of God v. Southfield*, No. 05-40220, 2007 WL 1017004 (E D. Mich. Apr. 2, 2007); *Affordable Recovery House v. City of Blue Island,* No. 12-CV-4241, 2016 WL 1161271, at *6 (N.D. Ill. Sep. 21, 2016).

Disabilities Act's building accessibility requirements,[40] an ordinance requiring all land development to tap into municipal sewer connections,[41] or stormwater remediation fees.[42]

7. Does RLUIPA apply to local governments using eminent domain to take property owned by religious institutions?

"Eminent domain" refers to government taking of private property for public use with just compensation. Some courts have held that, as a general matter, eminent domain is not the application of a zoning or landmarking law, and thus RLUIPA will not apply.[43] However, where municipalities have tried to use eminent domain to short-circuit the zoning process for places of worship that have applied for zoning approval, other courts have found that such actions may be covered by RLUIPA.[44]

8. Can places of worship still be landmarked?

Yes, places of worship can be landmarked.[45] However, like any other land use regulation, landmarking designations that impose a substantial burden on religious exercise must be justified by compelling governmental interests and pursued in the least restrictive ways possible.[46] Landmarking regulations also must be applied in a nondiscriminatory manner.[47]

9. What kinds of burdens on religious exercise are "substantial burdens" under RLUIPA?

A court's substantial burden inquiry is fact-intensive. Courts look at the degree to which a zoning or landmarking restriction is likely to impair the ability of a person or group to engage in the religious exercise in question.[48] Whether a particular restriction or set of restrictions will be a substantial burden on a complainant's religious exercise will vary based on the context. Courts have looked at factors such as the size and resources of the burdened party,[49] the actual religious needs of an individual or religious congregation,[50] the level of current or

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[40] *Anselmo v. Cty. of Shasta*, 873 F. Supp. 2d 1247, 1256-57 (E.D. Cal. 2012).
[41] *See Baptist Church of Leechburg v. Gilpin Twp*., 118 F. App'x 615, 617 (3d Cir. 2004).
[42] *Shaarei Tfiloh Congregation v. Mayor and City Council of Baltimore*, Nos. 2645, 2572, 2018 WL 1989534, at *23 (Md. Ct. Spec. App. Apr. 27, 2018).
[43] *See, e.g., St. John's United Church of Christ v. City of Chicago,* 401 F. Supp. 2d 887, 899 (N.D. Ill. 2005)
[44] *See Albanian Associated Fund v. Twp. of Wayne*, No. 06-cv-3217, 2007 WL 4232966, at *3 (D.N.J. Nov. 29, 2007); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1230 (C.D. Cal. 2002).
[45] *See, e.g., Trinity Evangelical Lutheran Church v. City of Peoria*, 591 F.3d 531, 533 (7th Cir. 2009).
[46] RLUIPA, 42 U.S.C. § 2000cc(a)(1); *see also Trinity Evangelical Lutheran*, 591 F.3d at 533.
[47] RLUIPA, 42 U.S.C. § 2000cc(b)(2).
[48] *See World Outreach*, 591 F.3d at 537, 539; *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 1000 (7th Cir. 2006).
[49] *See World Outreach*, 591 F.3d at 537, 539.
[50] *See Vision Church,* 468 F.3d at 1000.

imminent space constraints,[51] whether alternative properties are reasonably available,[52] the history of a complainant's efforts to locate within a community,[53] the absence of good faith by the zoning authorities,[54] and many other factors.

Examples of actions that some courts have found to constitute a substantial burden on religious exercise under RLUIPA include:

- effectively barring use of a particular property for religious activity;[55]
- imposing a significantly great restriction on religious use of a property;[56] and
- creating significant delay, uncertainty, or expense in constructing or expanding a place of worship, religious school, or other religious facility.[57]

Some courts have, for example, found substantial burdens on religious exercise in a denial of a church construction permit due to onerous off-street parking requirements imposed by a city,[58] a denial of approval for construction of a parish center,[59] a denial of expansion plans for a religious school,[60] and a denial of an application to convert a building's storage space to religious use.[61]

Conversely, other courts have found no substantial burden violation when a church was denied the amount of off-street parking it would have preferred when there were reasonable parking alternatives available,[62] when a religious high school was denied the ability to operate a commercial fitness center and dance studio out of a portion of its building,[63] and when a church was barred from demolishing an adjacent landmarked building it had purchased in order to construct a family life center, as there was other space on the church's campus that would be suitable.[64]

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[51] *See Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs of Boulder*, 612 F. Supp. 2d 1163, 1172 (D. Colo. 2009), *aff'd*, 613 F.3d 1229, 1236 (10th Cir. 2010).
[52] *See Petra Presbyterian Church*, 489 F.3d at 851; *World Outreach*, 591 F.3d at 539; *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214, 1228 (11th Cir. 2004).
[53] *See Guru Nanak Sikh Soc'y*, 456 F.3d at 991; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.
[54] *See Guru Nanak Sikh Soc'y,* 456 F.3d at 991-92; *Saints Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901.
[55] *See Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x. 729, 737 (6th Cir. 2007); *DiLaura*, 112 Fed. App'x. at 446.
[56] *See Guru Nanak Sikh Soc'y*, 456 F.3d at 988.
[57] *See Saints Constantine and Helen Greek Orthodox Church,* 396 F.3d at 901; *Guru Nanak Sikh Soc'y*, 456 F.3d at 992; *Westchester Day Sch.*, 504 F.3d at 349.
[58] *See Lighthouse Cty. Church of God v. City of Southfield*, No. 05-40220, 2007 WL 30280, at *9 (E.D. Mich. Jan 3, 2007).
[59] *See Mintz*, 424 F. Supp. 2d at 322.
[60] *See Westchester Day Sch.*, 504 F.3d at 349.
[61] *Castle Hills First Baptist Church v. City of Castle Hills*, No. SA-01-CA-1149-RF, 2004 WL 546792, at *17 (W.D. Tex. Mar. 17, 2004).
[62] *Id.*
[63] *See New Life Worship Ctr. v. Town of Smithfield Zoning Bd. of Review*, No. 09-0924, 2010 WL 2729280 (R.I. Super. Ct. July 7, 2010).
[64] *See Trinity Evangelical Lutheran Church*, 591 F.3d at 539.

10. RLUIPA contains a complicated description about when the "substantial burden" section will apply. Just when does the "substantial burden" test apply in a particular case?

RLUIPA applies the substantial burden test to zoning or landmarking laws that have procedures in place under which the government makes "individualized assessments of the proposed uses for the property involved."[65] Individualized assessments may be present, some courts have held, when the government looks at and considers the particular details of a proposed land use in deciding whether to permit or deny the use.[66] RLUIPA thus generally may cover applications for variances, special use permits, special exceptions, rezoning requests, conditional use permits, zoning appeals, and similar applications for relief, since these all ordinarily involve reviewing the facts and making discretionary determinations whether to grant or reject an application.[67] Some courts have held, however, that denial of a building or occupancy permit based *solely* on a mechanical, objective basis with no discretion on the part of the decision maker would not be an individualized assessment.[68]

Even if a zoning or landmarking case does not involve an individualized assessment, the substantial burden test still applies if there is federal funding involved or if the use at issue affects interstate commerce,[69] as might be the case with some construction or expansion projects.[70]

11. What are examples of compelling interests that will permit local governments to impose substantial burdens on religious exercise?

A government cannot impose a substantial burden on religious exercise unless it can prove both that it is pursuing a compelling governmental interest, and that it is using the means that are the least restrictive of religious freedom.[71] In the RLUIPA context, some courts have interpreted "compelling interest" to mean an interest of the "highest order."[72] As one court described it, an interest of the highest order typically involves "some substantial threat to public safety, peace, or order."[73] Some courts have ruled, for

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[65] RLUIPA, 42 U.S.C. § 2000cc (a)(2)(C).
[66] *See Guru Nanak Sikh Soc'y*, 456 F.3d at 986-87.
[67] *Id.; see also Konikov*, 410 F.3d at 1323; *Freedom Baptist Church of Del. Cty. v. Twp. of Middletown*, 204 F. Supp. 2d 857, 868 (E.D. Pa. 2002) ("[L]and use regulations through zoning codes necessarily involve case-by-case evaluations of the propriety of proposed activity against extant land use regulations.").
[68] *See, e.g.*, *Grace United Methodist v. Cheyenne*, 451 F.3d 643, 654 (10th Cir. 2006) (non-discretionary denial of variance not individualized assessment).
[69] RLUIPA, 42 U.S.C. § 2000cc(a)(2)(b).
[70] *See Westchester Day Sch.,* 504 F.3d at 354.
[71] RLUIPA, 42 U.S.C. § 2000cc-2(b).
[72] *Westchester Day Sch.,* 504 F.3d at 353.
[73] *Congregational Rabbinical Coll. of Tartikov, Inc. v. Village of Pomona*, 138 F. Supp. 3d 352, 456 (S.D.N.Y. 2015) (citing *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)).

example, that a municipality's asserted interests in revenue generation and economic development[74] or aesthetics[75] were not compelling.

While increased traffic can implicate safety concerns, some courts have ruled that a county or municipality cannot simply point to an interest in traffic safety in the abstract as a compelling interest justifying a substantial burden on religious exercise.[76] Rather, according to these courts, the local government must show that it has a compelling interest in achieving that interest through the particular restriction at issue, such as safety interests in regulating traffic flow on the particular street at issue.[77]

Even where an interest is compelling, RLUIPA requires that it must be pursued through the least restrictive means.[78] That is, if there is another way that the government could achieve the same compelling interest that would impose a lesser burden on religious exercise, it must choose that way rather than the more burdensome option.[79]

12. What does RLUIPA require of local governments with regard to treating religious assemblies and institutions as favorably as nonreligious assemblies and institutions?

RLUIPA contains a section known as the "equal terms" provision. It provides that "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."[80]

This provision was meant to address the problem of zoning codes, either facially or in application, excluding places of worship where secular assemblies are permitted. Senators commented on the problem of houses of worship being excluded from places where theaters, meeting halls, private clubs, and other secular assemblies would be permitted.[81]

Determining if a religious assembly is treated on "less than equal terms" than a secular assembly or institution requires a comparison of how the two types of entities are treated on the face of a zoning code or in its application.[82] Courts have differed regarding how

[74] *See Cottonwood Christian Ctr.*, 218 F. Supp. 2d at 1228-29.
[75] *See Westchester Day Sch.*, 504 F.3d at 353.
[76] *See id*.
[77] *Id.*
[78] RLUIPA, 42 U.S.C. § 2000cc(a)(1)(b).
[79] See, e.g., *Yellowbear v. Lambert*, 741 F.3d 48, 56-57 (10th Cir. 2014).
[80] RLUIPA, 42 U.S.C. § 2000cc(b)(1).
[81] 146 Cong. Rec. 16698 (daily ed. 2000) (Joint Statement of Senators Hatch and Kennedy).
[82] *See, e.g., Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1173 (9th Cir. 2011); *Third Church of Christ, Scientist, of New York City v. City of New York*, 626 F.3d 667, 669 (2d Cir. 2010).

such a comparison is made, and thus the precise legal test for determining when this provision is violated will vary depending on the judicial circuit in which the case arises.[83]

Examples of cases in which some courts have found equal terms violations include situations where places of worship were forbidden but private clubs were permitted;[84] where religious assemblies were prohibited but auditoriums, assembly halls, community centers, senior citizen centers, civic clubs, day care centers, and other assemblies were allowed;[85] and where places of worship were forbidden but community centers, fraternal associations, and political clubs were permitted.[86]

13. What constitutes discrimination based on religion or religious denomination under RLUIPA?

RLUIPA bars imposition or implementation of a land use regulation that discriminates on the basis of religion or religious denomination.[87] Courts have held that this bar applies to application of land use regulations that are discriminatory on their face, as well as land use regulations that are facially neutral but applied in a discriminatory manner based on religion or religious denomination.[88] Thus, if a zoning permit is denied because municipal officials do not like members of a particular religious group, or if for any other reason an applicant is denied a zoning permit it would have granted had it been part of a different religion or religious denomination, RLUIPA has been violated. Because this section applies to discrimination based on either religion *or religious denomination*, it can apply to situations where a city may not be discriminating against all members of a religion, but merely a particular sub-group or sect.

14. What does it mean for a local government to totally exclude religious uses from a jurisdiction?

RLUIPA prohibits local governments from "totally exclud[ing] religious assemblies from a jurisdiction."[89] For example, if a city, town, or county had no location where religious uses are permitted, that would be a facial violation of RLUIPA.[90]

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[83] *See, e.g.*, *River of Life Kingdom Ministries v. Vill. of Hazel Crest,* 611 F.3d 367, 371 (7th Cir. 2010); *Lighthouse Inst. for Evangelism*, 510 F.3d at 269; *Midrash Sephardi*, 366 F.3d at 1232.
[84] *Midrash Sephardi*, 366 F.3d at 1233; *Vietnamese Buddhism Study Temple in Am. v. City of Garden Grove*, 460 F. Supp. 2d 1165, 1174 (C.D. Cal. 2006).
[85] *Digrugilliers*, 506 F.3d at 614-15.
[86] *Petra Presbyterian Church,* 489 F.3d at 846.
[87] RLUIPA, 42 U.S.C. § 2000cc-2(b)(2).
[88] *See United States v. Vill. of Airmont,* No. 7:05-cv-5520, at 17-19 (S.D.N.Y. Nov. 12, 2008) (order denying motion to dismiss).
[89] RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(A).
[90] *See Vision Church*, 468 F.3d at 990.

15. What does it mean for a local government to impose unreasonable limitations on a religious assembly, institution, or structure?

RLUIPA prohibits land use regulations that "unreasonably limit[ ]" religious assemblies, institutions, or structures within a jurisdiction.[91] One court has concluded that a municipality will violate this provision if its land use laws, or their application, deprive religious institutions and assemblies of reasonable opportunities to use and construct buildings within that jurisdiction.[92] Another court has held that determination of reasonableness depends on a review of all of the facts in a particular jurisdiction, including the availability of land and the economics of religious organizations.[93] Some courts have found unreasonable limitations where regulations effectively left few sites for construction of houses of worship, such as through excessive frontage and spacing requirements, or where zoning restrictions imposed steep and questionable expenses on applicants.[94]

16. When must someone file suit under RLUIPA?

RLUIPA lawsuits brought by private plaintiffs must be filed in state or federal court within four years of the alleged RLUIPA violation.[95]

17. What is the Department of Justice's role in enforcing RLUIPA?

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages.[96] In a RLUIPA lawsuit, the Department might seek, for example, an order from a court requiring a municipality that has violated RLUIPA to amend its zoning code or grant specific zoning permits to a place of worship, religious school, or other religious use. The Department may not, however, seek monetary awards on behalf of persons or institutions that have been injured. To recover damages for RLUIPA violations, alleged victims must file private suits.[97] The Department reviews each case on its merits and the law in the jurisdiction in question. The Department does not base the decision of whether to bring an enforcement action on compliance or noncompliance with this guidance document.

Responsibility for coordinating RLUIPA land use investigations and suits has been assigned to the Housing and Civil Enforcement Section of the Civil Rights Division.

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[91] RLUIPA, 42 U.S.C. § 2000cc-2(b)(3)(B).
[92] *Rocky Mountain Christian Church v. Bd. of Cty. Comm'rs of Boulder*, 613 F.3d 1229, 1238 (10th Cir. 2010).
[93] *Vision Church*, 468 F.3d at 990 (citing 146 Cong. Rec. E1563 (daily ed. Sept. 22, 2000) (statement of Rep. Canady)).
[94] *Rocky Mountain Christian Church*, 613 F.3d at 1238; *see also Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290-91 (S.D. Fla. 2008) (imposition of "inflated costs" and onerous frontage and spacing requirements on houses of worship constitute unreasonable limitations).
[95] 28 U.S.C. § 1658; *Al-Amin v. Shear,* 325 F. App'x. 190, 193 (4th Cir. 2009); *Congregation Adas Yereim v. City of New York*, 673 F. Supp. 2d 94, 108 (E.D.N.Y. 2009).
[96] RLUIPA, 42 U.S.C. § 2000cc-2(f).
[97] RLUIPA, 42 U.S.C. § 2000cc-2(a).

That Section investigates and brings RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country. If you wish to bring a potential case to the attention of the Department of Justice, you should do so as soon as possible to allow adequate time for review.

The Department receives many complaints from individuals whose rights under RLUIPA may have been violated. It cannot open full investigations and bring suit in all cases. The Department generally endeavors to select cases that involve especially important or recurring issues, that will set precedents for future cases, that involve particularly serious violations, or that will otherwise advance the Department of Justice's goals of protecting religious liberty. In addition to opening investigations and filing suits, the Department sometimes files statements of interest and friend-of-the-court briefs in privately filed suits to highlight important issues of law. Individuals and institutions who believe their RLUIPA rights have been violated are encouraged to seek advice from a private attorney to protect their rights, in addition to contacting the Department of Justice.

18. How can someone contact the Department of Justice about a RLUIPA matter?

The Civil Rights Division's Housing and Civil Enforcement Section may be reached by phone at:

(202) 514-4713
(800) 514-1116
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